Taman Rimba (Mentakab) Sdn Bhd v Sin Yew Poh Tractor Works

HIGH COURT (IPOH) — CIVIL APPEAL NO 12–154 OF 2001
JAMES FOONG J
21 JANUARY 2002

Civil Procedure *— Res judicata — Issue estoppel — Issue arose due to enlargement of fiscal jurisdiction of sessions court — Whether res judicata applied in case*

Civil Procedure *— Transfer of action — From one sessions court to another — Local limits of sessions court, application of — Consent from Chief Judge must be obtained before transfer made — Whether Ipoh Sessions Court had territorial jurisdiction to hear proceedings — Whether case should be stayed pending application to Chief Judge for transfer — Subordinate Courts Act 1948 s 59(1) — Rules of the High Court 1980 O 93 r 3A(3)*

On 3 February 1993, the plaintiff filed a claim against the defendant in the High Court at Ipoh for a sum of RM132,363.75 for services rendered by the plaintiff to the defendant in a project in Mentakab, Pahang. Subsequent to the filing of the defence, the defendant applied to the judge to transfer the civil suit to the High Court at Kuala Lumpur. The reasons were that the agreement between the parties was made in Kuala Lumpur and the defendant's registered office was in Kuala Lumpur. The trial judge dismissed the defendant's application and there was no appeal filed against this decision. On 13 March 1995, the High Court of Ipoh transferred the civil suit to the Sessions Court of Ipoh, due to the enlargement of fiscal jurisdiction of the sessions court. Once the action reached the Ipoh Sessions Court, the defendant filed the application to stay the proceedings, or alternatively, to transfer the matter to the Sessions Court of Kuala Lumpur. Among the grounds were: (a) the defendant's registered address was in Kuala Lumpur; (b) witnesses of both parties in the action were in Kuala Lumpur; (c) the facts on which the plaintiff's case was based had no relationship or connection with Ipoh; and (d) even the plaintiff's place of business was believed to be in Kuala Lumpur. The plaintiff opposed the application on grounds of res judicata to which the defendant argued that res judicata, in the form of issue estoppel did not arise in the present set of circumstances and that by virtue of s 59(2) of the Subordinate Courts Act 1948 ('SCA') to be read with the High Court of Malaya's Practice Direction No 4 of 1993, the Sessions Court of Ipoh had no territorial jurisdiction to hear matters arising outside its territorial limits. The issues were: (i) whether the Ipoh Sessions Court had territorial jurisdiction; (ii) whether the application to transfer the action was res judicata; and (iii) whether the sessions court judge had power to transfer the action to the Sessions Court at Kuala Lumpur. The sessions judge rejected the defendant's application and the defendant appealed.

Held, allowing the appeal: A

(1) 'Local limits' was set out in the High Court Practice Direction 4 of 1993. There, the then Chief Justice of Malaya assigned to the Ipoh Sessions Court the territorial jurisdictional areas of Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut, and Pantai Remis. These areas designated to the Ipoh Sessions Court were certainly B not the places where the cause or matter in this action arose. It was in either Mentakab or Kuala Lumpur. Unlike the High Court of Malaya, the sessions courts throughout the country did not enjoy concurrent territorial jurisdiction of each other. Though they were set up by His Majesty, the Yang di-Pertuan Agong under s 59(1) of the SCA, territorial jurisdictional boundaries C were allocated to them. This was declared in s 59(2) of the SCA (see p 327A–C).

(2) The plaintiff had raised issue estoppel, ie where a party was estopped from raising in a subsequent proceeding an issue decided before. However, the territorial jurisdiction limitation D of the subordinate court was a new factor that emerged and thus it was a new matter and not one that could have been contemplated previously. Res judicata did not apply in this case (see pp 327H–I, 328C–D).

(3) By the reading of O 93 r 3A(3) of the Rules of the High Court 1980, the entire process for consideration of a transfer of a case E from one court to another, be that the High Court or subordinate court, was taken over by the Chief Judges of the High Courts. Once consent was obtained from or refused by the respective Chief Judges, the presiding judge or magistrate of the case would only need to complete the mechanical process of either ordering F or refusing an application for transfer before him. As consent from the Chief Judge in this action had not been obtained, the sessions court had no authority, presently, to entertain the prayer for transfer of the action to Kuala Lumpur. The application for transfer must be referred to the Chief Judge of Malaya (see p 329A–B, E–F). G

(4) The situation of this case justified and warranted a stay of proceedings to be granted pending the defendant's application to the Chief Judge of Malaya to transfer the action from the Sessions Court in Ipoh to the Sessions Court in Kuala Lumpur, or to which ever place the Chief Judge thinks fit and proper. H Otherwise, the decision of the Chief Judge, if favorable, may be rendered nugatory and the defendant would be prejudiced (see p 329H–I).

[Bahasa Malaysia summary I

Pada 3 Februari 1993, plaintif memfailkan satu tuntutan terhadap defendan di Mahkamah Tinggi Ipoh bagi jumlah RM132,363.75 bagi

perkhidmatan yang diberikan oleh plaintif kepada defendan bagi satu projek di Mentakab, Pahang. Setelah memfailkan pembelaan, defendan memohon kepada hakim untuk memindahkan guaman sivil tersebut ke Mahkamah Tinggi Kuala Lumpur. Sebab yang diberikan ialah bahawa perjanjian di antara dua pihak tersebut berlaku di Kuala Lumpur dan pejabat berdaftar defendan juga berada di Kuala Lumpur. Hakim perbicaraan menolak permohonan defendan dan tiada rayuan difailkan untuk menentang keputusan ini. Pada 13 Mac 1995, Mahkamah Tinggi Ipoh memindahkan guaman sivil tersebut ke Mahkamah Sesyen Ipoh, disebabkan peningkatan bidang kuasa fiskal Mahkamah Sesyen. Sebaik sahaja tindakan tersebut tiba di Mahkamah Sesyen Ipoh, defendan memfailkan satu permohonan untuk penggantungan prosiding, atau, sebagai alternatif, memindahkan perkara tersebut ke Mahkamah Sesyen Kuala Lumpur. Antara sebab-sebabnya ialah: (a) alamat berdaftar defendan adalah di Kuala Lumpur; (b) saksi-saksi bagi kedua-dua pihak bagi tindakan tersebut berada di Kuala Lumpur; (c) fakta-fakta yang menjadi asas kepada kes plaintif tidak mempunyai apa-apa hubungan atau kaitan dengan Ipoh; dan (d) perniagaan plaintif juga dipercayai berada di Kuala Lumpur. Plaintif menentang permohonan tersebut atas alasan res judicata dan defendan membalas bahawa res judicata, dalam bentuk isu estoppel tidak bangkit dalam keadaan ini dan menurut s 59(2) Akta Mahkamah Rendah 1948 ('AMR') yang dibaca bersama Arahan Amalan Mahkamah Tinggi Malaya No 4 tahun 1993, Mahkamah Sesyen Ipoh tidak mempunyai bidang kuasa wilayah untuk membicarakan hal-hal yang dibangkitkan di luar batasan wilayahnya. Isu-isu dalam kes ini ialah: (i) sama ada Mahkamah Sesyen Ipoh mempunyai bidang kuasa wilayah; (ii) sama ada permohonan untuk memindahkan tindakan tersebut adalah res judicata; dan (iii) sama ada hakim mahkamah sesyen mempunyai kuasa untuk memindah tindakan tersebut ke Mahkamah Sesyen Kuala Lumpur. Hakim mahkamah sesyen menolak permohonan defendan. Maka defendan merayu.

Diputuskan, membenarkan rayuan tersebut:

(1) 'Pembatasan tempatan' dijelaskan dalam Arahan Amalan Mahkamah Tinggi No 4 tahun 1993. Dalam Arahan tersebut, Ketua Hakim Malaya pada ketika itu memperuntukkan kepada Mahkamah Sesyen Ipoh bidang kuasa wilayah ke atas kawasan-kawasan Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut dan Pantai Remis. Kawasan-kawasan yang diperuntukkan kepada Mahkamah Sesyen Ipoh sememangnya bukan kawasan-kawasan di mana kausa atau perkara tindakan ini berasal. Ia berasal sama ada dari Mentakab atau Kuala Lumpur. Berbeza daripada Mahkamah Tinggi Malaya, mahkamah-mahkamah sesyen di seluruh negara tidak mempunyai bidang kuasa wilayah bersama. Walaupun ia ditubuhkan oleh Seri Paduka Baginda Yang di-Pertuan Agong di bawah s 59(1) AMR, sempadan bidang kuasa

wilayah telah diuntukkan kepadanya. Ini diisytiharkan di dalam s 59(2) AMR (lihat ms 327A–C). A

(2) Plaintif telah membangkitkan isu estoppel, yakni di mana satu pihak diestop daripada membangkitkan dalam prosiding berikutan satu isu yang telah diputuskan sebelumnya. Walau bagaimanapun, batasan bidang kuasa wilayah mahkamah rendah adalah suatu faktor yang baru wujud dan oleh itu, ia merupakan satu perkara baru dan bukannya satu perkara yang pernah difikirkan. Res judicata tidak dipakai dalam kes ini (lihat ms 327H–I, 328C–D). B

(3) Melalui pembacaaan A 93 k 3A(3) Kaedah-Kaedah Mahkamah Tinggi 1980, seluruh proses mempertimbangkan pemindahan kes dari satu mahkamah ke satu mahkamah yang lain, baik Mahkamah Tinggi mahupun mahkamah rendah, telah diambil alih oleh Ketua-Ketua Hakim Mahkamah-Mahkamah Tinggi. Sebaik sahaja keizinan dibenarkan atau ditolak oleh Ketua Mahkamah masing-masing, hakim atau majistret yang mempengerusi kes tersebut hanya perlu melengkapkan proses mekanikal sama ada mengarahkan atau menolak permohonan untuk pemindahan di hadapannya. Oleh kerana keizinan daripada Ketua Hakim dalam tindakan ini tidak diperolehi, mahkamah sesyen tidak mempunyai kuasa, pada ketika ini, untuk melayan permohonan untuk pemindahan tindakan ini ke Kuala Lumpur. Permohonan untuk pemindahan tersebut hendaklah dirujuk kepada Ketua Hakim Malaya (lihat ms 329A–B, E–F). C D E

(4) Situasi dalam kes ini dijustifikasi dan mewajarkan penggantungan prosiding dibenarkan sementara menunggu permohonan defendan kepada Ketua Hakim Malaya untuk memindahkan tindakan tersebut dari Mahkamah Sesyen Ipoh ke Mahkamah Sesyen Kuala Lumpur, atau ke mana-mana mahkamah yang difikirkan sesuai oleh Ketua Hakim. Jika tidak, keputusan Ketua Hakim akan disebabkan menjadi tidak bermakna dan defendan akan diprejudiskan (lihat ms 329H–I).] F

G

Notes

For cases on transfer of action, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6382–6390.

For cases on issue estoppel, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5140–5151. H

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189 (folld)

Greenhalgh v Mallard [1947] 2 All ER 255 (refd) I

Sova Sdn Bhd v Kasih Sayang Reality Sdn Bhd [1988] 2 MLJ 268 (refd)

Legislation referred to

Subordinate Courts Act 1948 ss 3 of the Third Sch, 59(1), (2)
Rules of the High Court 1980 O 93 r 3A, (3)
Subordinate Courts Rules 1980 O 1 r 4 (1)

Appeal from: 52–152–1995 (Sessions Court, Ipoh)

HR Goh (*Logan Sabapathy & Co*) for the appellant.
Paramjit Singh (*Mohd Noor & SY Lee*) for the respondent.

James Foong J:

Introduction

This is an appeal by the defendant, in a civil action ('the action') registered in the Sessions Court at Ipoh bearing number 52–152–1995, against the decision of the learned sessions court judge who rejected the defendant's application to: (a) stay proceedings of the action indefinitely and; (b) alternatively, to transfer the action to the Sessions Court in Kuala Lumpur.

Background

The background of this matter is simply this: on 3 February 1993, the plaintiff in the action had filed a claim against the defendant in the High Court at Ipoh for a sum of RM132,363.75 for services rendered by the plaintiff to the defendant in a project in Mentakab, Pahang. Subsequent to the filing of the defence, the defendant applied to the judge to transfer the civil suit to the High Court at Kuala Lumpur. The reasons tendered were that the agreement between the parties, formulated through various letters, was made in Kuala Lumpur and the defendant's registered office is in Kuala Lumpur. After hearing arguments, Justice Mohtar Abdullah dismissed the defendant's application. There was no appeal filed against this decision.

On 13 March 1995, the High Court of Ipoh, by its own motion, ordered the civil suit to be transferred to the Ipoh Sessions Court due to the enlargement of fiscal jurisdiction of the sessions courts throughout the country to hear civil cases not exceeding RM250,000. By this move, this action came to be landed in the Sessions Court in Ipoh till the present moment.

Once this action reached the Ipoh Sessions Court, the defendant filed the application to stay the proceedings or alternatively, to transfer of the action to the Sessions Court in Kuala Lumpur. The grounds given are as follows: (a) at all material times, the defendant's registered address is and was in Kuala Lumpur, (b) witnesses of both parties in the action are in Kuala Lumpur, (c) the facts on which the plaintiff's case is based have no relationship or connection with Ipoh, (d) and even the plaintiff's place of business is believed to be in Kuala Lumpur. With these reasons, the defendant stressed that the appropriate forum of convenience for trial of the action should be Kuala Lumpur.

The defendant opposed to this application on the ground of res judicata that the matter had been litigated and decided previously in the High Court at Ipoh.

Novel point raised by the defendant

Anticipating this objection from the plaintiff, the defendant now argues that res judicata, in the form of issue estoppel does not arise in the present set of circumstances. Here the defendant is claiming that the Ipoh Sessions Court lacks territorial jurisdiction to hear this action. Miss Goh, counsel for the defendant, explained that by virtue of s 59(2) of the Subordinate Courts Act 1948 ('SCA'), to be read with the High Court of Malaya's Practice Direction number 4 of 1993, the Sessions Court in Ipoh has no territorial jurisdiction to hear matters arising outside its territorial limits. It can only try civil, as well as criminal, matters within the vicinity of Ipoh and certain designated areas. Since the subject matter occurred in either Mentakab or Kuala Lumpur and the defendant's registered office is in Kuala Lumpur, the action ought to be transferred to Kuala Lumpur. This approach, accordingly to Ms Goh, was not taken up before, nor was this issue considered and determined by Justice Mohtar Abdullah at the High Court at Ipoh. She added that the jurisdictional limits of the subordinate courts could not even have been anticipated during the previous hearing in the High Court. It was only when the case was transferred to the Ipoh Sessions Court that this matter became apparent.

Issues

Though the first prayer in the defendant's prayer is for stay, and transfer of the proceedings is only pleaded in the alternative, I am of the view that in order to settle these issues, the following questions must be posted and answered in the following order of priority:

(1) has the Sessions Court in Ipoh territorial jurisdiction to try the action, which subject matter took place in Pahang and the defendant's registered office is in Kuala Lumpur?;

(2) is the application by the defendant to transfer the action res judicata?;

(3) even if the Ipoh Sessions Court has no territorial jurisdiction, and the application to transfer is not res judicata, has the sessions court judge power and authority to transfer the action to the Sessions Court in Kuala Lumpur?

Analysis

First question

To fully appreciate the argument advanced by Ms Goh, I must set out the relevant provisions cited. Section 59(2) of the Subordinate Courts Act 1948 states:

> Subject to this Act or any other written law, a sessions court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

'Local limits', according to Ms Goh, is set out in the High Court Practice Direction 4 of 1993. There, the then Chief Justice of Malaya assigned to the Ipoh Sessions Court the territorial jurisdictional areas of Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut, and Pantai Remis.

These areas designated to the Ipoh Sessions Court are certainly not the place where the cause or matter in this action arose. It was in either Mentakab or Kuala Lumpur. Unlike the High Court of Malaya sitting in various capital cites and towns in Peninsular Malaysia, the sessions courts throughout the country do not enjoy concurrent territorial jurisdiction of each other. Though they are set up by His Majesty, the Yang di-Pertuan Agong under s 59(1) of the SCA, territorial jurisdictional boundaries are allocated to them. This is declared in s 59(2) of the SCA which says that the sessions court shall 'hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it'. The High Court of Malaya does not have such restrictions except that it cannot go beyond the shores of the Malay Peninsular, vice versa with the High Court of Sabah and Sarawak whose territorial jurisdictional limits are confined to the two states in East Malaysia. But within each of the High Courts' territorial limits, a High Court Judge has concurrent and coordinate jurisdiction to try cases as his counter part in another city or town where there is a High Court. The rationale for this is, as explained by Justice Lim Beng Choon in *Sova Sdn Bhd v Kasih Sayang Reality Sdn Bhd* [1988] 2 MLJ 268 at p 270, the two respective High Courts have many branches. Thus, a judge sitting in the High Court of Malaya at Kuala Lumpur has the same power and right to try a matter or cause arising in another part of West Malaysia. This set up is therefore different from the subordinate courts. The subordinate courts have the restriction of local limits of jurisdiction assigned to them. When a cause or matter arises outside its local limits, then it has no jurisdiction to hear the substantive matter.

By this reasoning, I agree with the defendant's submission that the Ipoh Sessions Court has no territorial jurisdiction to hear the action.

Second question

The law on res judicata is succinctly analyzed and set out by Justice Peh Swee Chin in the Federal Court judgment of *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189 where two categories of res judicata were classified: issue estoppel and cause of action estoppel. Obviously what is raised before me by the plaintiff to ward off this appeal, is issue estoppel. This is where a party is estopped from raising in a subsequent proceeding an issue decided before. The test to be applied for determination of such matter, in my view, is the broader approach accepted by the Federal Court in *Asia Commercial Finance* where the dictum of

Sommervell LJ in *Greenhalgh v Mallard* [1947] 2 All ER 255 was adopted. It is:

> ... res judicata for this purpose is not confined to issues which the court is actually asked to decide, but ...it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

Though there was an application of a similar nature before the High Court in this case, the circumstances are now different. Since the shift of venue of this case to the subordinate court from the High Court, one new factor for consideration of such applications has emerged. This did not exist when the application was before the High Court. This is the territorial jurisdictional limitation of the subordinate courts. As expressed in the earlier part of this judgment, the Ipoh Sessions Court cannot try cases outside the areas specified in High Court Practice Direction Number 4 of 1993. This was not an issue before Justice Mohtar Abdullah for he was not handicapped by jurisdictional limitation. In fact, I do not think that anyone could have anticipated this element at the High Court hearing for transfer to raise it then. This is certainly a new matter, not one that could have been contemplated previously.

By these reasons, I am of the view that res judicata does not apply in this case.

Third issue

With the first and the second issues settled in the negative, the final question left to be decided is whether the Ipoh Sessions Court judge should have allowed the defendant's prayer for a stay of proceedings. But this is obviously dependent, in the circumstances of this case, on whether a transfer of the action is allowed. Though, as disclosed earlier, the request for stay of proceedings precedes the prayer for transfer, I am of the view that the latter should be considered first before former in order to provide justification for a stay, if it is allowed.

Dealing with the first question of whether the sessions court should have transferred the action to the Sessions Court in Kuala Lumpur, one must not lose sight of the new amendment to the Rules of High Court 1980 ('RHC') in the fashion of O 92 r 3A. Though s 3 of the Third Sch of the SCA permits a sessions court judge to transfer 'any proceedings to another court of coordinate jurisdiction', O 93 r 3A(3) imposes a precondition. It requires a judge or magistrate to:

> Before making any order to transfer any proceedings from the subordinate court to a High Court or from a High Court to a subordinate court or from a subordinate court to another subordinate court, the Chief Judge shall take into consideration whether the High Court or the subordinate court which shall hear the case is located at or nearest to the place where —
>
> (a) the cause of action arose;
>
> (b) the defendant, or one of the several defendants, resides or has his place of business;

A (c) the facts on which the proceedings are based exist or are alleged to have occurred; or

for other reasons it is desirable in the interest of justice that the proceedings should be had.

Thus, by the reading of this rule, the entire process for consideration of a B transfer of a case from one court to another, be that the High Court or subordinate court, is now taken over by the Chief Judges of the High Courts. Once consent is obtained from or refused by the respective Chief Judges, the presiding judge or magistrate of the case would only need to complete the mechanical process of either ordering or refusing an application for transfer before him.

C Miss Goh, in her enthusiasm to succeed in this appeal so that the action can be transferred to Kuala Lumpur, attempted to influence me that the rule cited has no application to matters litigated in the subordinate court. She boldly pointed out that such rule is not found in the Subordinate Courts Rules 1980 ('SCR'), it only appears in the RHC.

D I am not attracted by this approach for O 1 r 4(1) of the SCR declares that:

> in any matter of procedure or practice not provided for in these rules, the procedure and practice for the time being in use or force in the High Court shall, as near as may be, be followed and adopted.

E This therefore, demands adherence of the subordinate courts to the RHC when the SCR is silent.

As consent from the Chief Judge in this action has not been obtained, I am of the view that the sessions court has no authority, presently, to entertain the prayer for transfer of the action to Kuala Lumpur. The F application for transfer must be referred to the Chief Judge of Malaya.

When the matter is to be forwarded to another deciding authority, should a stay of proceedings be granted pending the outcome of this forum? To evaluate this, one must probe into the objective of the courts in granting a stay.

G According to *Halsbury's Laws of England* (4th Ed) at para 437, this process is made:

> to avoid the trial or hearing of the action from taking place, where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process... H And is made generally in the exercise of the court's discretionary jurisdiction.

With this as a guide, I think that the situation of this case justifies and warrants a stay of proceedings to be granted pending the defendant's application to the Chief Judge of Malaya to transfer the action from the Sessions Court in Ipoh to the Sessions Court in Kuala Lumpur, or to I whichever place the Chief Judge thinks fit and proper. Otherwise, the decision of the Chief Judge, if favorable, may be rendered nugatory and the defendant would be prejudiced.

Conclusion

By my reasons aforesaid, I hereby allow this appeal. The order of the sessions court handed down on 4 September 2001 be set aside and the application for a stay of proceedings by the defendant be allowed until the decision of the Chief Judge of Malaya on whether to allow transfer of this action, which application to the Chief Judge must be made by the defendant within seven days from date of this order. There shall be costs to the defendant/appellant in this appeal.

Appeal allowed.

Reported by Chew Phye Aun